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In re Application of
Jim Farquhar et al..
Application No. 08/818,520
Filed: March 14, 1997
For: PCMCIA STANDARD MEMORY CARD
FRAME

:
:
: DECISION GRANTING
: PETITION
:
:

This is a decision on the petition filed August 25, 1997, requesting that the above-identified reissue application be accorded a filing date of March 14, 1997. The application was recently forwarded to this office for consideration of the petition.

The application was deposited on March 14, 1997, as a reissue application of U.S. Patent No. 5,397,857. However, on July 3, 1997, Initial Patent Examination Division mailed a Notice requiring drawings of applicants' invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that the specification describes Figures 1-4.

In response, the petition and a copy of the original patent containing 4 sheets of drawings with Figures 1-4 were filed on August 25, 1997. Petitioners argue that the papers deposited on March 14, 1997, included a copy of U.S. Patent No. 5,397,857. Further, petitioners state that no change to the drawings contained in the patent were required and it was petitioners' intent to use the drawings in the patent.

The Patent and Trademark Office (Office) file is the official record of the papers originally filed on March 14, 1997, in this application. A review of the official file reveals that no drawings was filed on March 14, 1997, since no drawings showing an Office date stamp of March 14, 1997, are present in the file. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

The Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See MPEP § 503.

Petitioners' postcard receipt fails to list 4 sheets of drawings as papers being filed on March 14, 1997. Further, the copies supplied on March 14, 1997, of U.S. Patent No. 5,397,857 fail to include any drawings.

37 CFR 1.174(a) states that:

The drawings upon which the original patent was issued may be used in reissue applications if no changes whatsoever are to be made in the drawings. In such cases, when the reissue application is filed, the applicant must submit a temporary drawing which may consist of a copy of the printed drawings of the patent or a photoprint of the original drawings of the size required for original drawing.

Obviously, the drawings necessary for processing the application were omitted on March 14, 1997. However, this is a reissue application. The drawings for a reissue application are identical to the drawings found in the patent file, unless corrections are made at the time of filing or during prosecution of the reissue application. The application papers filed on March 14, 1997, indicate that no change was intended to be made to the formal drawings present in the file of U.S. Patent No. 5,397,857. Further, since this is a reissue and no new matter may be included in a reissue application, there is no doubt as to the content of the drawings for this reissue application.

In this case, petitioner failed to submit a temporary drawing. However, the requirement for a temporary drawing is a requirement of the rules. Under the circumstances of this case, the rule may be waived. The petition is, accordingly, construed as one filed under 37 CFR 1.183.

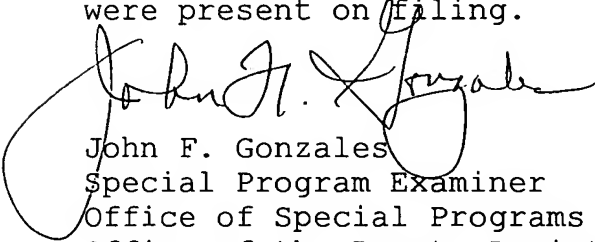
As so construed, the petition is granted.

The copy of the 4 sheets of drawings found in the copy of U.S.

Patent No. 5,397,857 supplied with the petition will be used to process the application.

The file still lacks an executed oath or declaration in compliance with 37 CFR 1.63 and 1.175. Accordingly, applicants are given **TWO MONTHS** from the date of this decision to file an executed oath or declaration in compliance with 37 CFR 1.63 and 1.175 in order to avoid abandonment of the application. This time period may be extended under 37 CFR 1.136(a). The response should be directed to the attention of Initial Patent Examination Division.

The application is being returned to Initial Patent Examination Division to await the executed oath or declaration and for further processing with a filing date of March 14, 1997, using the 4 sheets of drawings supplied on August 25, 1997, and for indication on the file wrapper label that 4 sheets of drawings were present on filing.



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JFG